

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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LOMA LINDA UNIVERSITY,

Plaintiff,

v.

19-CV-607-LJV-MJR  
DECISION & ORDER

SMARTER ALLOYS, INC.,

Defendant/Third-Party  
Plaintiff,

v.

RODRIGO VIECILLI,

Third-Party Defendant.

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On May 10, 2019, the plaintiff, Loma Linda University (“Loma Linda”), filed a complaint against the defendant, Smarter Alloys, Inc. (“Smarter Alloys”), to recover damages for breach of contract and to quiet title to certain inventions, or, in the alternative, rescind certain invention assignments. Docket Item 1.<sup>1</sup> On July 12, 2019, Smarter Alloys filed an answer and a counterclaim against Loma Linda, as well as a third-party complaint against Rodrigo Viecilli, D.D.S., Ph.D. Docket Item 25. On September 17, 2019, this Court referred this case to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 45.

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<sup>1</sup> This Court has jurisdiction over this matter because there is diversity of citizenship between the parties and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332.

On October 23, 2019, Loma Linda moved to dismiss certain amended counterclaims and to strike the fraud defense. Docket Item 50. That same day, Dr. Vieceilli moved to dismiss the amended third-party complaint. Docket Item 51. On November 13, 2019, Smarter Alloys responded to both motions, Docket Item 52, and on November 27, 2019, Loma Linda and Dr. Vieceilli replied, Docket Item 55.

On December 2, 2019, Judge Roemer held oral argument and ordered additional briefing. Docket Item 57. The parties subsequently filed letters in further support of and opposition to the various motions. See Docket Items 57-61.

On August 14, 2020, Judge Roemer issued a Report and Recommendation (“R&R”) finding that Loma Linda’s motions to dismiss certain counterclaims and to strike the fraud defense should be granted and Dr. Vieceilli’s motion to dismiss should be granted in part and denied in part. Docket Item 64. More specifically, Judge Roemer recommended that the second and fourth third-party claims against Dr. Vieceilli should be dismissed but the remaining claims should survive. *Id.* The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Roemer's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Roemer's recommendation to grant Loma Linda's motions to dismiss and to strike, and to grant in part and deny in part Dr. Vieceilli's motion to dismiss.

For the reasons stated above and in the R&R, Loma Linda's motions to dismiss certain amended counterclaims and to strike the fraud defense, Docket Item 50, are GRANTED. Dr. Vieceilli's motion to dismiss, Docket Item 51, is GRANTED IN PART AND DENIED IN PART; more specifically, the second and fourth third-party claims against Dr. Vieceilli are DISMISSED, and the remaining claims may proceed. The case is referred back to Judge Roemer for further proceedings consistent with the referral order of September 17, 2019, Docket Item 45.

SO ORDERED.

Dated: September 16, 2020  
Buffalo, New York

/s/ Lawrence J. Vilardo  
LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE